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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1409

LONNIE NORTH ..... APPELLANT

VS:

C. B. RUSSELL and NATHANIEL "TRAP" HELTON, JAILER OF HARLAN COUNTY ..... APPELLEES

ON APPEAL
FROM
COURT OF APPEALS OF KENTUCKY

MOTION TO DISMISS OR AFFIRM

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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1974

No. 74-1409

LONNIE NORTH ..... APPELLANT

VS:

C. B. RUSSELL and NATHANIEL "TRAP" HELTON, JAILER OF HARLAN COUNTY ..... APPELLEES

ON APPEAL FROM COURT OF APPEALS OF KENTUCKY

MOTION TO DISMISS OR AFFIRM

Appellees move the Court to dismiss the appeal herein or, in the alternative, to affirm the judgment of the Court of Appeals of Kentucky on the ground that it is manifest that the issues on which the decision of the case depends do not present a substantial federal question.

STATEMENT OF THE QUESTIONS PRESENTED

WHETHER THE QUESTIONS IN THE INSTANT CASE RAISE SUBSTANTIAL FEDERAL QUESTIONS UNDER THE DUE PROCESS AND/OR EQUAL PROTECTION CLAUSES OF THE FOURTEENTH AMENDMENT SO AS TO WARRANT REVIEW BY THIS COURT?

BEST COPY AVAILABLE

A. WHETHER TRIAL OF A MISDEMEANANT BEFORE A LAY JUDGE IS SO INHERENTLY UNFAIR THAT THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT REQUIRES ALL MISDEMEANOR CASES TO BE TRIED BEFORE JUDGES WHO ARE ATTORNEYS?

B. WHETHER KENTUCKY REVISED STATUTES 24.140, 26.150(1), and 26.200 ARE VIOLATIVE OF THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT BECAUSE THE STATUTES VARY THE QUALIFICATIONS JUDGES ARE REQUIRED TO MEET DEPENDING UPON LEGISLATIVE CLASSIFICATION OF JUDICIAL DISTRICTS ON THE BASIS OF POPULATION?

I. THE STATE STATUTES INVOLVED AND THE NATURE OF THE CASE.

A. THE STATE STATUTES

The statutes involved in this appeal are Kentucky Revised Statutes (hereinafter KRS) 26.010, 26.140, 26.150(1), 26.200, 189.990(10) (a), Constitution of Kentucky § 130 (see Appellant's Jurisdictional Statement, pp. 5-8), KRS 26.400(4) and Kentucky Rule of Criminal Procedure 12.06 (Appellees' Appendix "A"). The cumulative effect of these provisions is that all circuit judges and only judges of police courts in cities of the first and second classes must be lawyers; whereas, the judges of police courts in cities of the third, fourth, fifth and sixth classes need not be lawyers.

Section 156 of the Constitution of Kentucky and KRS 81.010 are also directly involved (see Appellees' Appendix "A"). This section of Kentucky's Constitution divides all of Kentucky's cities into six classes according to population, and is the basis of the classification of judges of police courts in the instant case:

100,000	population or more		FIRST CLASS
20,000 —	less than	100,000	SECOND CLASS
8,000 —	less than	20,000	THIRD CLASS
3,000 —	less than	8,000	FOURTH CLASS
1,000 —	less than	3,000	FIFTH CLASS
	less than	1,000	SIXTH CLASS

B. PROCEEDINGS BELOW

The appellant Lonnie North was convicted on July 18, 1974, in the Police Court of the City of Lynch, Kentucky, of the offense of driving while intoxicated. Appellee C. B. Russell, Judge of the Lynch Police Court, after finding appellant guilty, fixed appellant's sentence at thirty days in the county jail and a fine of $150.00. On July 19, 1974, appellant filed in the Harlan Circuit Court a petition for writ of habeas corpus. A writ was issued directing appellees Russell and Nathaniel "Trap" Helton, jailer of Harlan County, Kentucky, to produce appellant in circuit court. On July 23, 1974, the Harlan Circuit Court, Honorable Edward G. Hill, Circuit Judge, presiding, denied habeas corpus relief and remanded appellant to jail. On the same day, appellant filed his notice of appeal to the Court of Appeals of Kentucky and his designation of the record.

Lynch, Kentucky, is a fifth class city. KRS 81.010. KRS 26.200 does not require the police judge of a city of the fifth class to be an attorney. Appellee Russell is not a

licensed attorney. The appellant in his petition for writ of habeas corpus alleged that (1) the statutory plan which requires police judges to be attorneys in the more populated cities of the first two classes, while not making the same requirement applicable to rural towns of the fifth class, is in violation of the Equal Protection Clause of the Fourteenth Amendment; and (2) trial by a judge who is not an attorney inevitably deprives appellant of a fair trial in violation of the Due Process Clause of the Fourteenth Amendment.

The Court of Appeals of Kentucky, citing *Ditty* v. *Hampton*, Ky., 490 S.W.2d 772 (1973), dismissed for mootness, 414 U.S. 885 (1973), rejected appellant's contentions, affirmed the lower court's denial of writ of habeas corpus and set aside the provisions for appellant's bail pending appeal. *North* v. *Russell*, Ky., 516 S.W.2d 103 (1974). On appeal to this Court, the judgment of the Court of Appeals was vacated and the case remanded for further consideration. 95 S.Ct. 673 (1974). On remand from this Court, the Court of Appeals of Kentucky reaffirmed its prior holding. *North v. Russell*, Ky., ___ S.W.2d ___ (decided March 21, 1975). (Appellant's Appendix 1).

ARGUMENT

THE ISSUES RAISED IN THE INSTANT CASE DO NOT PRESENT SUBSTANTIAL FEDERAL QUESTIONS UNDER EITHER THE DUE PROCESS CLAUSE OR THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT.

A. APPELLANT PRESENTS NO SUBSTANTIAL FEDERAL QUESTION UNDER THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT BECAUSE HE HAS FAILED TO DEMONSTRATE THAT A REASONABLE LIKELIHOOD OR PROBABILITY OF UNFAIRNESS EXISTS IN A CRIMINAL MISDEMEANOR TRIAL PRESIDED OVER BY A JUDGE WHO IS NOT AN ATTORNEY.

The issue which appellant raised in the lower courts and which he now presents before this Court is whether the General Assembly of the Commonwealth of Kentucky has lawfully vested in a judge not required to be an attorney the power of presiding at a criminal misdemeanor trial held in the police court of a city of the fifth class. Appellant's contention is not simply that the appellee, Judge Russell, has denied appellant a fair trial through judicial errors made in this particular case, but instead appellant argues that the entire inferior court system of Kentucky denies him due process in that *any* criminal trial presided over by *any* non-attorney judge is inherently unfair. Therefore, appellant has not only the burden of establishing that his federal constitutional rights were violated in this specific instance, he must also demonstrate that such a denial is probable in all criminal cases which are to be heard by judges who are not attorneys. See *Estes* v. *State of Texas*, 381 U.S. 532, reh. den., 382 U.S. 875 (1965); *Re Murchison*, 349 U.S. 133 (1955).

The Kentucky Court of Appeals rejected contentions identical to those made by appellant herein in *Ditty* v. *Hampton*, supra. Two other states besides Kentucky — Arizona and Illinois — have rejected the contention that the Due Process Clause requires a trial before a judge who is an attorney. In *Crouch* v. *Justice of Peace Court of Sixth Precinct*, 7 Ariz. App. 460, 440, P.2d 1000 (1968), the court stated that the Due Process Clause does not require an attorney judge to instruct a jury as to matters of law in a criminal misdemeanor proceeding. And in *City of Decatur* v. *Kushmer*, 43 Ill.2d 334, 253 N.E.2d 425 (1969), the court stated that, in the absence of a constitutional or statutory requirement, a lay magistrate who presides over the jury trial of a criminal misdemeanant need not be an attorney, because trial before a lay magistrate is not per se a denial of due process. *Cf. California* v. *Gordon*, 525 P.2d 72 (Cal. 1974), cert. denied, 43 U.S. L.W. 3448 (U.S. Feb. 18, 1975).

It is true that this Court in a series of cases has disqualified mayors as judges for probable bias. However, these decisions were made on the basis that the mayors had a financial interest in the fines collected and not on the ground that they were non-lawyers. *Dugan* v. *Ohio*, 277 U.S. 61 (1928); *Tumey* v. *Ohio*, 273 U.S. 510 (1926); *Ward* v. *Village of Monroeville*, 409 U.S. 57 (1972). In *Shadwick* v. *City of Tampa*, 407 U.S. 345 (1972), this Court unanimously upheld a Florida law by which court clerks, who were not attorneys or judges, determined probable cause for the issuance of warrants. Such a determination was deemed within the capabilities of the layman

and not violative of due process if the layman was impartial and independent.

Appellant argues that since this Court has extended the right to counsel to accused in misdemeanor cases which may result in a loss of liberty, *Argersinger* v. *Hamlin*, 407 U.S. 25 (1972), the Court should also require judges in such misdemeanor cases to be attorneys. The Kentucky Court of Appeals in rejecting the allegation that use of lay judges worked a denial of due process, *Ditty*, supra, distinguished the situation at bar from that in *Argersinger*, supra, by stating:

> ". . . The function of the court is not to defend the accused, or to represent him, but to decide fairly and impartially. An accused needs counsel to defend him, as pointed out in *Gideon* v. *Wainwright*, because the government employs lawyers to prosecute him—because our system of criminal justice is an adversary system. But the judge is not one of the accused's adversaries, and is not there either to defend or to prosecute him. So the fact that the accused needs a lawyer to defend him does not mean that he needs to be tried before a lawyer judge." 490 S.W. 2d at 775

Appellant contends that the right to counsel implies the right to a lawyer judge who can appreciate and digest the legal points being made by counsel. However, the fact that one is not an attorney does not mean that one cannot comprehend legal issues. There are literally thousands of legislators who are not attorneys and they actually write the laws and in so doing must deal extensively with

complex legal issues. In the *Shadwick* case, supra, this Court pointed out that:

> ". . . Our legal system has long entrusted non-lawyers to evaluate more complex and significant factual data than that in the case at hand. Grand juries daily determine probably cause prior to rendering indictments, and trial juries assess whether guilt is proved beyond a reasonable doubt. The significance and responsibility of these lay judgments betray any belief that the Tampa clerks could not determine probable cause for arrest." 407 U.S. at 351-352

Appellant further conjectures that there is a probability of bias on the part of non-attorney judges because they are likely to rely upon county attorneys or city prosecutors for legal advice. Appellees deny the validity of the urged inference. The fact that an individual judge — attorney or non-attorney — may subjectively look to, or be inordinately influenced by, an agent of the prosecution in making legal judgments does not reflect upon the system which allowed the judge to take office. Another judge selected by the same system might well depend exclusively on defense attorneys for guidance in deciding cases. The fact that a judicial system may require judges to be lawyers does not mean that the system will have good judges; and the fact that a judicial system may allow non-attorneys to serve as judges does not mean that system will have bad judges.

Appellant claims that:

> ". . . Judge Russell is a stark example of the prejudice encountered by a criminal defendant when tried by a lay judge. The North 'trial', however, cannot be singled out as unusual. The *probability* of an unfair hearing pervades Judge Russell's courtroom and . . . he should not be permitted to sit in criminal cases because of the *inherent probability* that all criminal defendants facing trial in his court will be prejudiced in their ability to obtain a fair and impartial hearing." (Appellant's Jurisdictional Statement, p. 39) (Emphasis ours)

Assuming arguendo that this is a true description of appellee Russell's courtroom, appellant has not produced a scintilla of evidence to show that this situation stems from the fact that appellee Russell is not an attorney or that there is a reasonable likelihood of the situation arising whenever there is use of a lay judge in a trial.

According to appellant's own telephone survey, there are forty-one police judges who are attorneys (Appellant's Jurisdictional Statement, Appendix 6). Yet appellant has failed to produce any proof—or even reasonable grounds for speculating—that attorney judges are less biased or less prone to judicial error than lay judges. There has been no showing that lay judges give harsher sentences, or that they are reversed more on appeal, or even that they convict more defendants. Appellant's contention that there is a greater likelihood of prejudice or judicial error in courts of lay judges is based upon pure conjecture. Without more substantial facts, appellant's contention remains an hypothesis and nothing more.

The fact that a judicial error may have been committed in a single proceeding does not necessarily mean there has been a denial of due process in all courts of the

same classification. The Fourteenth Amendment does not assure immunity from judicial error. *Breck* v. *Washington,* 369 U.S. 541 (1962). If, in an individual case, a defendant does feel that the judge, be he an attorney or non-attorney, is biased or that he [defendant] has been denied his right to fundamental fairness, he has a remedy under Kentucky law.

Under Kentucky's two-tier misdemeanor court system an accused may challenge the decision of a police court by an appeal of right to the circuit court for a trial *de novo.* In circuit court the judge is required to be an attorney with a minimum of eight years experience in practice. KRS 23.032(1); Kentucky Constitution § 130. Since this circuit court trial is a trial *de novo,* Kentucky Rule of Criminal Procedure 12.06, the defendant is actually given an advantage by the presence of the police court system. If the defendant is acquitted in the police court, no more action can be taken against him; but if he is convicted, he has the right to a completely new trial in circuit court. As this Court pointed out in *Colten* v. *Kentucky,* 407 U.S. 113 (1972):

> "... The right to a new trial is absolute. A defendant need not allege error in the inferior court proceeding. If he seeks a new trial, the Kentucky statutory scheme contemplates that the slate be wiped clean. Ky. Rule Crim. Proc. 12.06. Prosecution and defense begin anew. By the same token neither the judge nor jury that determines guilt or fixes a penalty in the trial de novo is in any way bound by the inferior court's findings or judgment. The case is to be regarded exactly as if it had been brought there in the first instance."

Further in *Colten,* this Court stated:

> "... In reality his [defendant's] choices are to accept the decision of the judge and the sentence imposed in the inferior court or to reject what in effect is no more than an offer in settlement of his case and seek the judgment of judge or jury in the superior court, with sentence to be determined by the full record made in that court." 407 U.S. at 119

The police court has been created in Kentucky to provide a more efficient and less expensive adjudication of misdemeanors. The police court serves not only to ease the burden on circuit courts and prevent backlogs on their dockets, but also to afford a defendant a speedy hearing. Appellees submit that under Kentucky law a defendant's right to due process is adequately preserved regardless of whether the judge of the police court is an attorney.

In view of the fact that appellant has failed to demonstrate an identifiable probability of bias or a reasonable likelihood of denial of due process in trials presided over by law judges, it is well to consider this Court's ruling in *Snyder* v. *Commonwealth of Massachusetts,* 291 U.S. 97, 105 (1933):

> "The Commonwealth of Massachusetts is free to regulate the procedures of its court in accordance with its own conception of policy and fairness unless in so doing it offends some principle of justice so rooted in the traditions and conscience of our people as to be ranked as fundamental [citations omitted].

> Its procedure does not run foul of the Fourteenth Amendment because another method may seem to our thinking to be fairer or wiser or to give a surer promise of protection to the prisoner at the bar."

Even if this Court is persuaded that attorney judges are to be preferred over non-attorney judges, it should not strike down the entire inferior court system of Kentucky unless it is firmly convinced that the system is in actual violation of the Constitution, for as this Court stated in *Shadwick,* supra, ". . . Our federal system warns of converting desirable practice into constitutional commandment." 407 U.S. at 352.

The admirable restraint which the Kentucky Court of Appeals has shown in this respect may prove instructive. On remand from this Court the Kentucky Court stated:

> "We fully appreciate the absurdity of having a lawsuit — any lawsuit — presided over in this day and age by a person without legal training or experience. Nevertheless, it was our conclusion in *Ditty* v. *Hampton,* Ky., 490 S.W.2d 772 (1973), that the federal constitution does not deny the people the right to have it that way if they so desire." (Appellant's Appendix, p. 4a)

Appellees therefore submit that the mere fact that appellant was tried by a lay judge does not raise a substantial federal question, inasmuch as it cannot be demonstrated that such trials inherently result in the denial of "fundamental fairness shocking to the universal sense of justice." *Kinsella* v. *United States, ex rel Singleton,* 316 U.S. 234 (1960).

B. APPELLANT PRESENTS NO SUBSTANTIAL FEDERAL QUESTION UNDER THE EQUAL PROTECTION CLAUSE OF THE FOURTEENTH AMENDMENT BECAUSE HE HAS FAILED TO DEMONSTRATE THAT VARIANCE OF THE QUALIFICATIONS JUDGES ARE REQUIRED TO MEET DEPENDING UPON LEGISLATIVE CLASSIFICATION OF JUDICIAL DISTRICTS ON THE BASIS OF POPULATION IS UNREASONABLE OR IRRATIONAL.

Since appellant has failed to demonstrate that there is a "fundamental right" to have misdemeanor charges tried before a judge who is an attorney, when, as is the case herein, the Legislature requires judges to be attorneys in some classes of judicial districts but not in others, the validity of the classification under the Equal Protection Clause of the Fourteenth Amendment turns not upon the question of whether it serves "a compelling state interest," but rather upon the question of whether one who attacks the classification can demonstrate that it bears no reasonable or rational relationship to a legitimate state interest. *Shapiro* v. *Thompson,* 394 U.S. 618 (1969).

The Kentucky General Assembly in the exercise of its legislative discretion has varied the qualifications required for police court judges depending upon the population of the judge's respective jurisdiction. Section 156 of the Kentucky Constitution requires cities to be classified according to population size and sets the population limitation for each class of city (Appendix "B"). The Kentucky Legislature has required judges in police courts of first and second class cities, i.e., the most heavily populated cities, to be attorneys, KRS 26.140, 26.150; while police judges of cities of the third through sixth classes need not

be attorneys, KRS 26.170, 26.190, 26.200 (Appendix "A" and Appellant's Jurisdictional Statement, pp. 6-7). Appellant claims that this variance of the qualifications judges are required to meet based upon the classification of the cities in which the judges serve unreasonably discriminates against defendants tried in the third through sixth classes of cities in violation of the Equal Protection Clause of the Fourteenth Amendment.

There is a presumption which favors legislative classifications which cannot be overturned unless such classification is plainly arbitrary or without a sound basis in reason.

> ". . . State legislatures are presumed to have acted within their constitutional power despite the fact that, in practice, their laws result in some inequality. A statutory discrimination will not be set aside if any state of facts reasonably may be conceived to justify it." *McGowan* v. *State of Maryland,* 366 U.S. 420, 426 (1961)

Appellees maintain that the statutory classification set forth by the General Assembly of Kentucky is a reasonable method for achieving the Commonwealth's legitimate objective of providing a fair, efficient and expeditious court system for all its citizens. The Kentucky Court of Appeals in *Ditty* v. *Hampton,* supra, presented sound reasons which competently justify the classifications of KRS 26.140, 26.150, 26.170, 26.190 and 26.200:

> "We can conceive of the following possible reasonable bases for the classification here in question:
>
> "1. The greater volume of court business in the larger cities requires that judges be attorneys to enable the courts to operate efficiently and expeditiously (not necessarily with more fairness and impartiality).
>
> "2. Lawyers with whom to staff the courts are more available in the larger cities.*
>
> "3. The larger cities have greater financial resources with which to provide better qualified personnel and better facilities for the courts. *Cf. Metcalfe* v. *Howard,* 304 Ky. 498, 201 S.W.2d 197.
>
> "That population and area factors may justify classifications within a court system has long been recognized. See *Missouri* v. *Lewis,* 101 U.S. 22, 25 L.Ed. 989. Our court has held valid the statutes making different provisions, among the police courts of different classes of cities, as to the right to a jury trial. See KRS 26.400; *Houk* v. *Starck,* 251 Ky. 276, 64 S.W.2d 565; *City of Mt. Sterling* v. *Holly,* 108 Ky. 621, 57 S.W. 491; see also KRS 25.014." 490 S.W.2d at 776-777

Appellees submit that a statutory classification of cities cannot be ruled in violation of the Equal Protection

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***With regard to this point made by the Kentucky Court of Appeals in Ditty, supra, appellees have found that according to the Kentucky-Tennessee Legal Directory of 1974, published by Legal Directories Publishing Co., Inc. and certified by the American Bar Association as having complied with the Rules and Standards for Law Lists, there are twenty-four counties in Kentucky with five or less attorneys and eight counties with two or less atorneys (see Appendix "B").**

Clause unless it is plainly arbitrary and irrational. Appellees assert that the decision of the Court of Appeals of Kentucky in *Ditty* v. *Hampton*, supra, ought to be followed by this Court in that:

> "The reasonableness of the bases for the classification in issue must be measured in the light of the possible detriment that members of the public may suffer from the classification. There has been no showing in this case that nonlawyer police judges, proportionately, convict more defendants, impose higher sentences, or are reversed more on appeal, than lawyer judges. There is no basis for any finding that they are less fair and impartial in cases in which the defendant, as he is entitled, is represented by counsel, or that their ignorance of the law harms the accused more than the government. There is no support for the assertion that the nonlawyer judge, generally, will accept the prosecutor's version of the law rather than that of defense counsel.
>
> "We conclude that the bases for the classification reasonably justify the classification in the balance of the bases against possible detriment factors." 490 S.W.2d at 777

The classification of cities in the instant case is rational and reasonable and does not deny citizens of any city the right to equal protection of the laws; therefore, appellant presents no substantial federal question under the Equal Protection Clause of the Fourteenth Amendment.

CONCLUSION

Wherefore, appellees respectfully submit that the questions upon which this cause depends are so unsubstantial as not to need any further argument, and appellees respectfully move the Court to dismiss this appeal or, in the alternative, to affirm the judgment entered in the cause by the Court of Appeals of Kentucky.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, KENNETH A. HOWE, JR., one of counsel for appellees, hereby certify that the foregoing Motion to Dismiss or Affirm was served on appellant by depositing three copies each of same in the United States mail, first class postage prepaid, this 28th day of May, 1975, addressed to counsel for appellant, HON. CHARLES E. GOSS, Central Street, Harlan, Kentucky 40831, and HON. DEAN HILL RIVKIN, 630 Maxwelton Court, Lexington, Kentucky 40508, of Counsel.

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APPENDIX

APPENDIX "A"

Kentucky Constitution § 156:

"Six classes; population determines classification; organization and assignment. — The cities and towns of this Commonwealth, for the purposes of their organization and government, shall be divided into six classes. The organization and powers of each class shall be defined and provided for by general laws, so that all municipal corporations of the same class shall possess the same powers and be subject to the same restrictions. To the first class shall belong cities with a population of one hundred thousand or more; to the second class, cities with a population of twenty thousand or more, and less than one hundred thousand; to the third class, cities with a population of eight thousand or more, and less than twenty thousand; to the fourth class, cities and towns with a population of three thousand or more, and less than eight thousand; to the fifth class, cities and towns with a population of one thousand or more, and less than three thousand; to the sixth class, towns with a population of less than one thousand. The general assembly shall assign the cities and towns of the Commonwealth to the classes to which they respectively belong, and change assignments made as the population of said cities and towns may increase or decrease, and in the absence of other satisfactory information as to their population, shall be governed by the last preceding federal census in so doing; but no city or town shall be transferred from one class to another, except

APPENDIX "A" (Continued)

in pursuance of a law previously enacted and providing therefor. The general assembly, by a general law, shall provide how towns may be organized, and enact laws for the government of such towns until the same are assigned to one or the other of the classes above named; but such assignment shall be made at the first session of the general assembly after the organization of said town or city."

Kentucky Revised Statute 26.400(4):

"In cities of the fourth, fifth and sixth classes, the accused may demand a jury trial in all cases in the police court where the fine may be more than twenty dollars."

Kentucky Revised Statute 26.170 provides in relevant part as follows:

". . . No person shall be eligible to be a police judge [of a third class city] unless, at the time of his election, he is at least twenty-four years of age, is a qualified voter in the city, and has been an actual resident of the city for at least two years next preceeding his election."

Kentucky Revised Statute 26.190 provides in relevant part as follows:

". . . No person shall be eligible to be a police judge [of a fourth class city] unless he is at least twenty-four years of age and has resided within the limits of the city at least six months next preceeding his election."

APPENDIX "A" (Continued)

Kentucky Revised Statute 81.010 provides in relevant part as follows:

Cities are classified as follows:

* * *

"(5) Fifth class:

* * *

"Lynch, Harlan County. . ."

Kentucky Rule of Criminal Procedure 12.06:

"Appeals taken to the circuit court shall be docketed by the clerk thereof as a regular criminal prosecution and shall be tried anew, as if no judgment had been rendered, and the judgment shall be considered as affirmed to the extent of the punishment, if any, adjudged against the defendant in the circuit court, and thereupon he shall be adjudged to pay the costs of the appeal. If an appeal taken to the circuit court be dismissed, the judgment of the court from which it was taken shall stand affirmed and the costs of the appeal shall be paid by the party whose appeal is dismissed."

APPENDIX "B"

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Kentucky Counties
with
Five or Less Attorneys

County	*Number of Attorneys*
Ballard	5
Bath	4
Bracken	2
Carlisle	2
Clinton	4
Crittenden	4
Cumberland	3
Edmonson	3
Elliott	2
Gallatin	4
Hancock	4
Hickman	3

APPENDIX "B" (Continued)

County	*Number of Attorneys*
Jackson	2
Lee	5
Lyon	4
McLean	3
Menifee	1
Owsley	2
Pendleton	4
Robertson	2
Rockcastle	5
Spencer	4
Trimble	2
Wolfe	3